

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS LIABILITY
LITIGATION (NO. VI)

Civil Action No. MDL 875

RENO v. A C and S, INC., et al

PA-ED No. 09-CV-60293
Trans from WD-WI Case No. 01-cv-0189

PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO
OWENS-ILLINOIS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Plaintiff moves the court to enter an order granting plaintiff leave to file a sur-reply in opposition to the Reply Memorandum of Law in Support of Owens-Illinois' Motion for Summary Judgment. In support of this motion, plaintiff states as follows:

1. In its reply memorandum, Owens-Illinois introduced a new argument not cited in its motion for summary judgment or in plaintiff's response. Specifically, Owens-Illinois argues that plaintiff Charles Reno failed to plead a claim for asbestosis within the statute of limitations period, and that he should not be allowed to amend his complaint. As plaintiff explains in his sur-reply, this argument has no merit.
2. The Tenth Circuit has ruled that "when a moving party advances in a reply new reasons and evidence in support of its motion for summary judgment, the nonmoving party should be granted an opportunity to respond." *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998). The Eastern District of Pennsylvania has adopted this standard. See *Lange v. Acands, Inc.*, 2012 U.S. Dist. LEXIS 64719, 20-21 (citing *Alston v. Forsyth*, 379 F.App'x at 129) (E.D. Pa. Apr. 3, 2012).

3. This motion for summary judgment has not been set for oral argument or for a ruling, so a sur-reply is still timely.
4. A proposed sur-reply identifying and responding to the new argument is attached as Exhibit A.

Relief Requested

Plaintiff moves this court for leave to file the sur-reply attached as Exhibit A to this motion.

Dated: May 23, 2013

/s/ Robert G. McCoy
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